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*Attorneys for Plaintiff*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

JUSTIN PETERSON

CASE NO. 3:19-CV- 01701-MO

Plaintiff,

v.

C.R. BARD, INC. and BARD PERIPHERAL  
VASCULAR, INC.,

Defendants.

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION FOR  
RECONSIDERATION ON  
ALLOCATION OF TIME AT  
TRIAL (#178)**

Counsel for the parties have not conferred regarding the issue presented in the underlying Motion for Reconsideration, filed Sunday afternoon prior to the Monday continuation of the Pretrial Conference. Plaintiff, appreciating that everyone is burdened by the limits of time at this stage in the case, must be brief.

Respectfully, Plaintiff offers the following points and will rely on the Court's inherent discretion in determining the process and procedures to be adhered to at trial. Plaintiff will forego citing authority or making additional argument. This is done wholly in the interest of brevity and devoting needed time to other matters, not intending any disrespect to the Court, or any party.

Plaintiff again requests a 60-40 split of trial time for the following reasons:

1. Plaintiff has the burden of proof regarding the issues of liability and damages.
2. Defendant's affirmative defense of contributory fault is not complex in theory or in the presentation of evidence, if any.
3. Plaintiff must spend significant time in his case-in-chief educating the jury about the underlying issues related to the evolution, design, purpose, and medical need for / potential health repercussions of medical devices like Defendant's product at issue.
4. The trial procedure adopted by the Court in other cases was likely dependent upon various factors that were case specific. As an example, it is believed that one or more of those cases included a claim sounding in strict liability and/or a punitive damage claim. Each would, arguably, require additional attention of the defense. Such claims are not at issue here.

Respectfully Submitted,

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WM. KEITH DOZIER, LLC

/s/ Ben C. Martin

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on May 3<sup>rd</sup>, 2021, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Ben C. Martin

Ben C. Martin